In the High Court of Punjab and Haryana, Chandigarh.

1. **R.S.A. No.1742 of 2002**

Date of Decision: 18.10.2007

Amrik Singh

…Appellant

Versus

Santokh Singh

…Respondents

AND

2. **R.S.A. No.1744 of 2002**

Amrik Singh

…Appellant

Versus

Santokh Singh and Others

…Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. Pawan Kumar, Advocate
for the appellant in both the appeals.

Mr. Amit Jain, Advocate
for the respondents in both the appeals.

RAJESH BINDAL, J.

This order of mine will dispose of two appeals bearing Regular Second Appeal Nos. 1742 and 1744 of 2002, which have been disposed of by the learned First Appellate Court vide common judgment dated February 1, 2002.

The claim made in the suit filed by Santokh Singh in Regular Second Appeal No.1742 of 2002 was to the effect that he is owner in possession of the land measuring 18 marlas which was purchased by him from Amrik Singh vide registered sale deed dated July 9, 1992. In terms of the sale deed and the site plan annexed thereto, 18 feet wide passage was lying towards the Zainub (southern side) of the property purchased by him and the same was left to be used by the parties as public street. However, Amrik Singh was restraining Santokh Singh for opening his doors, windows, drains and patnalas etc. on the street side. As a sequel to the filing of the suit by Santokh Singh, immediately thereafter, Amrik Singh filed suit on June 6, 1994 seeking declaration to the effect that he was owner of passage measuring 18 feet situated on the southern side of his house and further declaration to the effect that the recitals regarding the sale of the right of ownership and usage of the passage incorporated in the sale deed dated July 9, 1992 executed by him in favour of Santokh Singh were null and void.

The learned trial Court decreed the suit filed by Amrik Singh, whereas the suit filed by Santokh Singh was dismissed. However, learned lower Appellate Court vide common judgment and decree, set aside the judgments and decrees passed by the learned trial Court in both the suits and granted injunction in favour of the respondent Santokh Singh, holding that 18 feet passage was a public street, the rights for use of the same were sold by Amrik Singh to Santokh Singh vide sale deed dated July 9, 1992.

Even before this Court, learned counsel for the appellant submitted that in fact the appellant was owner of the entire property measuring 84 kanals & 14 marlas and only a plot measuring 18 marlas was sold by him to Santokh Singh vide registered sale deed dated July 9, 1992 and the passage measuring 18 feet was his private property being an approach kept by him for his own house and the respondent was not entitled to open his doors, windows, drains, patnalas etc. on this side of the building being constructed by him. However, he could not deny the fact that in the sale deed there is a specific recital about the sale of rights of the passage of 18 feet on the southern side of the plot sold to the respondent. Though learned counsel for the appellant tried to explain the language in the sale deed by submitting that it only mentioned 18 feet wide street and nothing more. However, when confronted with the claim made by him in the suit filed against Santokh Singh seeking declaration of the recital regarding the sale of right of ownership/usage of the passage in dispute to be null and void, he had

no answer. Once the appellant had sold the rights in street adjoining the plot of the respondent with his open eyes at the time of execution of sale deed, nothing lies in his mouth to back out from that later on merely by saying that it was his private property and he did not charge anything for the same. Rather the facts on record show that the suit filed by the appellant was only counter-blast to the suit filed by the respondent seeking restrain against the appellant.

In view of my above discussions, I do not find any illegality has been committed by the learned Court below in recording findings against the appellant. No substantial question of law is involved in the present appeals. Accordingly, the same are dismissed.

(Rajesh Bindal)
Judge

DATED: 18.10.2007
"DK"